

#### REMARKS/ARGUMENTS

Claims 1-23 and 25-39 are active in this application. The claims have been amended for clarity. Support for Claims 26-39 is found in original Claims 4, 7, 9, 10, 11, 13, 15, 16, 20, and 6 as well as the specification as originally filed. No new matter is added.

The pending claims in this application are directed to a heat-induced gelling foaming composition comprising an aqueous phase which in turn comprises a polymer having water-soluble units and units having in water a LCST from 5 to 40°C at a concentration of 1% by mass. The claims also require that the concentration of the polymer is such that the gel point is in the range of 5 to 40°C.

The rejection of Claims 1-22 and 25 under 35 U.S.C. § 103(a) over U.S. Patent 5,509,913 (“Yeo”) is respectfully traversed.

Yeo describes a flushable composition which is made of polymers such that the composition is water-insoluble with limiting amounts of water, but when contacted with larger amounts of water, the composition becomes soluble and falls apart to facilitate disposal (for example, see column 10, lines 26-39). Yeo also describes various polymers and copolymers that can be used to formulate the flushable composition and, in particular, polymers with a LCST of approximately 25°C (see column 9, lines 26-28). The composition in Yeo can be in the form of a non-woven, a film, foams, adhesive, and yarns (see column 10, line 29 and lines 40-44). Based on this description the Examiner believes “that it is well within the purview of the teachings of the reference that the claimed foamed polymers can be made” (page 4 of the Official Action).

However, it appears as if the Examiner has overlooked certain features of the invention that distinguish it from this publication.

First, the present claims are not directed to foams, but a composition which is capable of foaming, for example, when agitated and/or placed in contact with the skin.

Second, the present claims are not directed to the polymers themselves but a composition comprising an aqueous phase which also comprises the polymer. This is different from the compositions described in Yeo. Yeo is concerned with making an article that falls apart in water and as such the inclusion of water in the composition containing the polymer would be contrary to the core purpose of the Yeo description. For further guidance on this point, Applicants direct the Examiner's attention to MPEP § 2141.02: "PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS."

Third, the polymers that Yeo describes as suitable for his invention are only those polymers having an LSCT of about 25°C (see column 9, lines 26-28) but not a polymer comprising both water-soluble units and units having a LCST as required the in current claims.

In view of the above, Applicants request that this rejection be withdrawn.

The rejection of Claims 1-22 and 25 under the doctrine of obviousness-double patenting over co-pending applications U.S. Serial No. 10/145,142 (which is now U.S. Patent No. 6,689,856) and U.S. Serial No. 10/170,911 is addressed by the terminal disclaimer filed herewith.

The rejections of Claims 23 and 24 are addressed by amendment. Accordingly, withdrawal of these rejections is requested.

Application No. 10/070,922  
Reply to Office Action of February 3, 2004

Finally, Applicants request allowance of this application.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413 -2220



Richard L. Treanor, Ph.D.  
Attorney of Record  
Registration No. 36,379

Daniel J. Pereira, Ph.D.  
Registration No. 45,518